The Milton Regional Authority supports the clean up of the Chesapeake Bay and all impaired waters. We appreciate the opportunity to provide comments on the draft TMDL dated September 24, 2010.

Based on the following comments and questions, the Authority believes that it is not appropriate to implement the draft TMDL without considerably more public participation and information sharing. Further, we believe that the TMDL should be re-drafted in response to all comments and questions and to reflect the severe impacts of the demand of economic resources required to comply with the re-drafted TMDL. Rather, the Pennsylvania Department of Environmental Protection should be allowed to continue with the implementation of its Chesapeake Bay Tributary Strategy (CBTS).

Schedule Is Inadequate

There is not sufficient time in the schedule to consider public comment and then to revise the TMDL. EPA's schedule appears to be an effort to avoid significant consideration of public comment as much as to meet a court ordered deadline. The impact of the TMDL will be felt for decades and will cost billions of dollars. The schedule is not considerate of the weight of the issues presented in the EPA TMDL.

Due to the significant number of comments expected on EPA's controversial draft TMDL and the current schedule requiring the TMDL to be finalized by the end of the year, it would be impossible for EPA to seriously consider the comments submitted, thus making the public comment period a mere exercise to an EPA predetermined request (i.e., a sham). Additional time needs to be provided for EPA to be able to evaluate and respond to public comments. As EPA has done in numerous other instances, where a court-imposed deadline does not provide adequate time, additional time should be requested from the court. Only then can EPA seriously evaluate comments from the public.

Limit of Treatment Technology for POTW's is Incorrect

The TMDL states that limits of POTW treatment technology for total nitrogen and total phosphorus are, respectively, 3 mg/l and 0.1 mg/l.

1. Please cite the development document that arrives at this conclusion.
2. Please identify what treatment technology is required for achieving this performance, MBR's, denite filters, or what?
3. Please state what consideration has been given to the colder wastewater temperatures that prevail in Pennsylvania than in, say, mid-Maryland.
4. Please provide the analysis that relates the limit of treatment technology to the results that would be reported in a DMR given that the limit of detection of total phosphorus is 0.06 mg/l and that a non-detection result will be reported as 0.03 mg/l and not as 0.00 mg/l.
5. Please provide the analysis that relates annual cap loads, given colder wastewater temperature and higher flows in January through April and December of each

year, to the limit of technology limits of 3 mg/l for total nitrogen and 0.1 mg/l for total phosphorus.

6. Why is limit of technology applied without regard to delivery ratios?
7. If the requested information is not available, please tell us why consideration was not given to these matters.
8. Can special circumstances be argued that limit of technology does not apply to a particular POTW? For example, would a northern Pennsylvania POTW be able to argue that the limit would not apply there?

In the case of Milton Regional Sewer Authority, should cap loads be reduced from the current levels based on design capacity and 6 mg/l total nitrogen and 0.8 mg/l total phosphorus to limit of technology because other segments fail to meet their targets, it is likely that we would be facing increased capital expenses of over $6 million and increased operations and maintenance costs of $0.8 million per year. In addition, it is likely that additional lands would need to be purchased to site the required additional treatment units.

Uncertainty of TMDL Requirements Delays and Prevents Compliance and Adds Cost

POTW's typically deliver complex treatment plant upgrades that take about 5 to 6 years from start of planning to initiation of operation. The EPA construction grants program experience was even longer from start to finish.

Given that Pennsylvania developed its CBTS in 2004 through 2006 and that many POTW's have already received annual cap loads and compliance schedules in their NPDES permits with EPA's encouragement and approval and started construction and given that EPA has announced backstop cap loads based on effluent concentrations that are 50 percent of the CBTS limits for total nitrogen and 12.5 percent of total phosphorus:

1. What should a POTW in a planning phase plan for? Should it plan for the CBTS limits or the backstop limits or both?
2. The same question for a POTW under construction? Should it change order in extra treatment?
3. What about the Milton Regional Sewer Authority. Our project is almost ready to be bid. What should we build?
4. Even if EPA does not deploy backstop limits with the initial issuance of the TMDL, what assurances will EPA make that backstop limits will not be deployed at any of the two year reviews or at the end of the current NPDES permit term?
5. Will POTW's be able to succeed in arguing financial impossibility in cases where they have gone into substantial debt to achieve the CBTS limits and are subsequently subject to backstop limits?

6. How will long term contracts that POTW's may have for the purchase or the sale of credits be dealt with if backstop limits are deployed or in the case that thresholds for the creation of credits changes?
7. Similarly, how will nutrient credit generation and purchase be calculated given different delivery ratios in the 5.3 model versus the 4.3 model upon which the trading program has been built?

District of Columbia Blue Plains POTW Treated Differently from Pennsylvania's POTW's

The Blue Plains POTW NPDES permit was effective September 30, 2001.

1. Why is the Blue Plains POTW allowed to discharge from just one of its outfalls concentrations of total nitrogen and total phosphorus greater than EPA's assumed limit of technology? The NPDES permit provides for limits of 3.88 mg/l total nitrogen and 0.18 mg/l total phosphorus.
2. Why do the limits contained in the Blue Plains POTW NPDES permit allow cap loads of 4,377,580 pounds per year total nitrogen which is equal to the load granted to all 183 significant POTW's in Pennsylvania (before the consideration of the average Pennsylvania delivery ratio of 0.75. and Blue Plains delivery ratio of 1.0)?
3. Why is there no cap load for total phosphorus in the Blue Plains permit?
4. Why is the concentration limit for total phosphorus 0.18 mg/l instead of the EPA assumed limit of technology of 0.1 mg/l?
5. Why are the proposed backstop limits for Pennsylvania POTW's lower than the limits imposed on Blue Plains in light of Blue Plains much higher delivery ratios and the Pennsylvania POTW's in the Potomac basin being upstream of the Blue Plains discharge?
6. Why is the "calculated cap load" (based on design flow times monthly maximum concentration) for total phosphorus 202,737 pounds per year when the total nitrogen cap for all Pennsylvania point sources is 200,000 pounds per year?
7. Same question, but asked in light of the difference in delivery ratios for Blue Plains and all of Pennsylvania.
8. Are the Blue Plains planned total nitrogen reductions beginning in January 1, 2015 considered in the current model and in the resultant allocation of loadings to states and segments within state?

Reallocation Of Loads To Other Segments Is Unjustified and Unfair

The EPA conclusion that the failure of the agricultural and developed segments to meet their allocations should not be a reason to reward those segments by reducing the allocations of the point sources and assigning the difference to the agricultural and developed segments. EPA, in fact, rewards the non-attainment segments, but penalizes

the point source segment which is the best performing and closest to compliance segment.

Using the EPA reasoning, point sources should stop compliance, appeal their permits and refuse to implement nutrient reduction so that they receive the same reward as the agricultural and developed segments. This makes no sense.

1. What are the expected additional capital, annual, and present worth costs associated with implementation of the backstop limits of 3 mg/l total nitrogen and 0.1 mg/l total phosphorus?
2. What are the expected savings in capital, annual, and present worth costs associated with implementation the reallocation of additional total nitrogen and total phosphorus to the agricultural and developed segments?
3. What analysis has EPA made on the social and economic impacts of such re-allocation?

Environmental Justice Threatened

The draft TMDL ignores the cost impact of the backstop limits to be imposed on Pennsylvania POTW's. EPA has not considered the environmental justice of such re-allocation given that larger populations of minorities and low and moderate income families reside in the cities and boroughs that are served by public sewers than in the agricultural and developed segments.

In the case of Milton (as is typical in other municipalities), over 50 percent of the population is of low and moderate income. These will be the people paying the cost of the additional treatment capital and operation and maintenance costs for meeting the backstop limits because those in the agricultural community would not be taking steps to address their non-point source nutrient discharges. It is inappropriate to require low income minorities to pay a disproportionate share due to the inactions of other non-minority, more affluent sectors.

Has EPA considered the environmental justice of its proposed backstop limits and has it sought outreach to representatives of minority and low and moderate income residents regarding the disproportionate impact of such approach?

EPA Has Not Considered the Difference Between Reality vs. Promises in the State's WIP's

The WIP's prepared by New York, Pennsylvania, Delaware, and West Virginia may represent what those states are actually capable of doing and not promises that more can be achieved.

1. Has EPA considered that the WIP's from the various states may have been written from different points of view and that a WIP provides no assurance that the actions promised will be achieved?
2. If the states do not have sufficient regulatory authority to satisfy EPA, what regulatory authority can EPA assert to assure that the WIP's, as written, can be implemented?
3. If the states do not have sufficient resources, financial or other, what resources can EPA provide to assure that the WIP's as written can be implemented?

Lack of Model Data Limits Public Comment

Watershed model data has been unavailable for review or has been available only in extremely complex and large data sets that are unusable to the public. Beginning in mid-summer, numerous requests have been made to DEP to release the 5.3 delivery ratios. DEP has never provided that data saying that they could not obtain it from EPA. It has only been in the last 3 days that EPA has furnished the delivery ratios, first in a file that contained over 1.4 million lines of data, then in tables which included all PA NPDES permits, but not sorted for significant point sources and not identifying the phase 1, 2, and 3 POTW's or not providing the facility names. Delivery ratios are critical to evaluating compliance paths for POTW's.

1. Is the modeling so incomplete that moving forward with the TMDL is unwise?
2. What is the status of completion of the 5.3 model?
3. Will each new model run in the future necessitate changing the TMDL and all the policy, regulation, programs, etc. that result from the TMDL?
4. Do delivery ratios decline with reduced nutrient loadings? If that is the case, have reduced delivery ratios been forecast in the model to decline in future years? This question is based on the demonstrated tendency for lower concentrations of nutrients to be consumed nearer the point of discharge than the instance where large concentrations are discharged.
5. Do delivery ratios change with climate change and has this been forecast in the model?

Sediment Limits Should Not Apply to POTW's

The draft TMDL assigns sediment limits to POTW's.

1. How are sediment loads contributed by point sources measured and reported? Is this the TSS discharge, the volatile TSS, as measured in the POTW effluent plus stormwater runoff, or what?
2. Are a POTW's SSO and CSO contributions included in the calculation?

Funding is Not Addressed

There is not sufficient funding to implement the TMDL. In the point source segment this is also true especially in light of the previous studies on the unsustainable nature of Pennsylvania's wastewater infrastructure. Given that most of the benefit of Pennsylvania's efforts will be seen in other states, additional sources of monies should be provided by other than Pennsylvania residents. DEP does not sufficiently report in the WIP on the costs of compliance nor does it make the point that the WIP cannot be implemented without huge amounts of additional funding.

1. Will the Federal government contribute the billions of dollars required for compliance?
2. Will Pennsylvania face difficulty in competing in the world economy as a result of the TMDL?

Nutrient Inputs to the Bay Is a Guess

While POTW's report exact nutrient contributions in their discharges in their monthly DMR's the volume of nutrients entering the Chesapeake Bay is a modeling guess. In the case of New York and Pennsylvania continuous sampling of just a few points would allow the exact calculation of nutrient contributions to the Bay.

It is troubling that the exact amount of nutrient and sediment reaching the Bay from Pennsylvania is not known through continuous measurement, but rather estimated by model. For example, DEP asserts that if more BMP's were reported in Pennsylvania, the model would predict that less nutrient and sediment would reach the Bay even if those BMP's had been implemented years ago. That does not make sense. The point source community monitors its effluent in accordance with their NPDES permits. Why does PA not monitor what it discharges into the Bay? Previous inquiries indicate that it is not DEP's responsibility to undertake such monitoring, but rather the USGS's. Why would the process of adding additional data into a model result in Pennsylvania discharging less to the Bay? This just does not make sense and causes one to question the entire TMDL process.

1. What are the results of sampling the Susquehanna River at the Mason-Dixon Line? Please describe the scope and extent of the data.
2. Please confirm that DEP's assessment in the WIP is correct and that the simple reporting of more BMP implementation would reduce Pennsylvania's contribution to the Bay.

Respectfully submitted,

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